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No. 75

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

COLORADO INTERSTATE GAS COMPANY,
a Corporation,
Appellant,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION AND PANHANDLE EASTERN PIPE LINE COMPANY,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS.

APPELLANT'S BRIEF OPPOSING APPELLEES' MOTIONS TO DISMISS

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APPELLANT'S BRIEF OPPOSING APPELLEES' MOTIONS TO DISMISS

Appellees, Kansas State Corporation Commission and Southwest Kansas Royalty Owners Association, have filed a joint motion to dismiss. The other Appellee, Panhandle Eastern Pipe Line Company, has filed a separate motion to dismiss. The motions are similar and make essentially the same arguments. We submit that they misinterpret the questions involved and do not show any lack of jurisdiction on the part of this Court.

I.

THE SUBSTANTIAL FEDERAL QUESTIONS PRESENTED IN OUR JURISDICTIONAL STATEMENT WERE PROPERLY RAISED AND WERE EXPRESSLY DETERMINED BY THE KANSAS SUPREME COURT.

The pertinent statute, 28 *U.S.C.* 1257, provides for the jurisdiction of this Court to review decisions of state courts where there is drawn in question the validity of a state statute on the ground of its being repugnant to the constitution and laws of the United States and the decision is in favor of its validity. Plainly it is the decision of the Kansas Supreme Court which upheld as valid orders having the status of state statutes as against our federal attack on such orders that is in issue on these appeals and which this Court has jurisdiction to, and should, review.

One cannot escape the conclusion that the Kansas Supreme Court treated the federal questions which we present here as having been properly raised and in its opinion expressly passed upon such questions.* Thus, in the opinion of the Kansas Supreme Court at A-36, the Court stated,

> "The appellees contend that the orders of the Commission violate the commerce clause of the federal constitution and the Natural Gas Act."

After discussion of these issues, the Kansas Supreme Court held the orders valid as within legitimate state area pursuant to the exemption contained in the Natural Gas Act, stating (A-39).

*Such decisions are contained in Appendix 1 and Appendix 2 in our Jurisdictional Statement, running from pages A-1 through A-57. References herein to such decisions of the Kansas Supreme Court will be to the pertinent pages in such appendices.

"The regulation of the production of gas was clearly left within the jurisdiction of the states."

Therefore, when the Kansas Supreme Court (A-42) reversed the judgments of the trial court and instructed such court to dismiss the petitions for review challenging orders through October, 1957, and further instructed the trial court to approve the allowable orders from November, 1957, through January, 1959, it expressly passed upon the federal questions here raised. It is, therefore, perfectly clear that the Kansas Supreme Court expressly considered the federal questions involved in these appeals insofar as they pertain to Kansas Corporation Commission orders from November of 1957 through January of 1959. The fact that the orders prior to November of 1957 were not considered is of no moment. The same questions were before the court beginning in November, 1957, and extending through January, 1959. Such questions here presented were recognized by the Kansas Supreme Court and were determined by that Court.* It is to review that determination that these appeals were taken. They fall expressly within the jurisdiction of this Court.

It is true that the Kansas Supreme Court also considered procedural questions. However, it is just as clear that such procedural questions in the view of the Kansas Su-

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*Such court held (A-25),

"Certain monthly allowable orders (November, 1957, through January, 1958) issued by the Commission before its report and order, effective February 1, 1958, was entered, were before the district court for review, and are before this court on appeal. However, as the Commission followed the same formula in determining these monthly allowables as it did in determining the monthly allowables after it entered its report and order, it would serve no useful purpose to extend further this lengthy opinion by a separate discussion of them. We will consider the market demand determinations and the allowables made for the months beginning March, 1958, and extending through January, 1959."

preme Court did not detract one whit from its recognition and treatment of the federal questions presented. Thus the Kansas Supreme Court observed at A-14

> "Certain procedural questions have been raised which will first be given attention. Although the decision on the merits may render their determinations unnecessary, it is advisable that the proper procedure be outlined in order that the courts shall not again be faced with the chaotic situation that exists here."

The situation is the same under the amended Kansas statute where the Kansas Supreme Court wrote a separate opinion, beginning at page 43 of the Appendix to our Jurisdictional Statement. The Kansas Supreme Court observed at A-46,

> "The questions presented by these appeals were determined in *Colorado Interstate Gas Co. v. State Corporation Comm.*, (41,515), 192 Kan. .... P.2d ....., insofar as they challenge the Commission's orders for the reason that they are not supported by a substantial competent evidence; they violate the provisions of the Gas Conservation Act or the Commission's basic order; they constitute an interference with interstate commerce; they invade the province of the Federal Power Commission under the Natural Gas Act, or they violate the due process clause of the United States Constitution or impair the obligation of contracts. Undue repetition will be avoided if we incorporate that opinion here by reference as determinative of the issues mentioned. We do so."

It is obvious, therefore, that the Kansas Supreme Court considered the federal questions raised as set forth in our Jurisdictional Statement and determined such questions aside from any procedural problems. We seek review of such determination on the substantive federal questions so recognized and determined. The Appellees would like to

duck such federal questions and therefore contend that the decisions below rest on an adequate non-federal ground. The trouble with such contention is that such view was not shared by the Kansas Supreme Court. That Court recognized the questions presented in our Jurisdictional Statement, treated them in all respects as being properly raised and rendered its decision thereon.* We submit that such decision is incorrect insofar as it pertains to the merits and therefore seek review by this Court. The jurisdiction of this Court is to review the determinations of such questions by the Kansas Supreme Court. They were there so determined and are subject to review under the jurisdiction granted this Court.

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*The rule is as laid down by this Court in *Charleston Fed. Sav. & Loan Association* v. *Alderson*, 324 U.S. 182, 185-6, 65 S. Ct. 624, 89 L. Ed. 857, 861 (1945),

> "Where it appears from the opinion of the state court of last resort that a state statute was drawn in question, as repugnant to the Constitution, and that the decision of the court was in favor of its validity, we have jurisdiction on appeal. For we need not inquire how and when the question of the validity of the statute was raised when such question appears to have been actually considered and decided by that court."

To the same effect see *Steele* v. *Louisville & Nashville R. R. Co.*, 323 U.S. 192, 197, 65 S. Ct. 226, 89 L. Ed. 173, 180 (1944).

II.

IN ORDER TO EXECUTE THE AVOWED PURPOSE OF CAPTURING FOR THE KANSAS HUGOTON FIELD A GREATER PORTION OF THE INTERSTATE MARKET FOR GAS, THE KANSAS COMMISSION EXCEEDED ITS AUTHORITY.

The Kansas Commission Did Not Pro Rate the Actual Market for Kansas Hugoton Gas. Rather It Set the Portion of the Interstate Market for Gas Which It Conceived the Pipeline Purchasers Should Allocate to Kansas Hugoton from Their Interstate Markets. This Is Not Concerned with Production and Gathering Within the Hugoton Field. Rather It Is a Reaching Out into the Federal Sphere under the Natural Gas Act, the Sale and Transportation of Gas in Interstate Commerce. It Affects the Interstate Pipeline Purchasers by Disrupting Purchasing Patterns, Jeopardizing Reserves, and Necessarily Affects the Cost of Gas.

These proceedings were begun before the Kansas State Corporation Commission (by notices directed to the pipe line purchasers) to consider the market demand in the Kansas Hugoton Field and (by orders directed to the pipe line purchasers) to study the factual data submitted under order concerning the pipe line purchasers' interstate markets for gas. The Commission, after hearings pursuant to such notices and orders (issued in March of 1956) entered a general order effective February 1, 1958, stating that it would determine market demand after consideration of the interstate markets of the pipe line purchasers in the Kansas Hugoton Field and would pro rate to such field such market demand so determined without correction for the

actual runs of gas—the actual amount of gas marketed from the Kansas Hugoton Field. This is shown by the Commission's order contained in the Appendix to our Jurisdictional Statement from page A-90 through page A-101. In a separately concurring opinion (A-104) the Chairman stated that the Commission was committed to setting artificially high allowables at a figure which eventually would permit equalization of pressures in the Hugoton Field between Kansas and Oklahoma and which would permit a planned depletion of the Kansas Hugoton Field in some 30 years. The Chairman recognized the coercion on the pipe line purchasers by the underages which developed under the Commission's practice of setting such artificially high allowables far in excess of the actual gas marketed, with the inevitable loss of reserves to the pipe line purchasers who could not run such artificially high allowables.*

Commissioner Richard C. Byrd also specially concurred (A-105-107), indicating clearly his view that there should be a planned depletion of Kansas Hugoton with minimum allowables established, particularly since the pipe line purchasers' markets had increased disproportionately to their takes from Kansas Hugoton.**

The Commission in its report to the Legislature contained in the Appendix to our Jurisdictional Statement at A-138-139, asked for a clearer mandate authorizing it to order a planned depletion of the Kansas Hugoton Field. The Commission, in the Joint Stipulated Abstract with this Appellant, candidly stated that its purpose was to get the

*Note also the Chairman's dissent from the Commission's order for December, 1957 (R. Vol. III, pp. 238-240). For the convenience of the Court we have reproduced this material and it is contained in the Appendix to this brief at App. A1-A2.

**This is the same Richard C. Byrd who now appears in a different hat as special counsel for the Kansas State Corporation Commission.

runs from the Kansas Hugoton Field increased, *i.e.*, to take the action necessary so that more gas would be marketed from such field (R., Vol. 1[2], p. 3.)*

What the Corporation Commission actually did, and is continuing to do, is to set artificially high allowables, making no correction for the actual amount of gas run from the field. It is not limiting production in the generally recognized manner for proration orders to the amount of gas actually marketed and spreading such quantity equitably to all the wells in the pro rated pool. This is graphically illustrated by the growth of underage disclosed in the table in the Appendix to our Jurisdictional Statement at pp. A-124 and A-125. This great accumulation of underage (by March of 1960 over 152 billion cubic feet, and much larger by this date) measures the difference between market demand as determined by the Commission and the actual market for gas from the Kansas Hugoton Field.

It does not help this situation to refer to nominations, to current allowable, to net allowable, or to any other label. The Commission, by setting artificially high allowables (allowables greater than the actual demand for gas) has made available for production in the field a great deal more

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*The orders do affect and are intended to affect the pipe line purchasers, as note the testimony of the Chairman of the Kansas State Corporation Commission on July 21, 1964, before the F.P.C. *In the Matters of Transcontinental Pipeline Company, et al.*, F.P.C. Docket No. G-20464, *et al.*, at p. 5436:

"Q. It is your idea of market demand as against the pipeline company's idea of market demand. That is what it gets down to, isn't it?

"A. Yes, sir.

"Q. And you are trying to tell them that they will have to take what you determine they shall take rather than what they in their judgment determine they should take. That is what it gets down to, isn't it?

"A. That is correct."

gas than can actually be marketed from the field. This Appellant sought during the hearings before the Commission to pinpoint that fact by nominating zero for a proration period. This nomination was sent in, together with an explanatory letter indicating that there was already available for production from the wells connected to this Appellant's system sufficient quantities of unrun gas, i.e., a part of the great accumulated underage, so that any further allowable would only aggravate the situation.* This was no idle gesture on the part of this Appellant nor was it any "flippant" practice as suggested in the joint motion of the Corporation Commission and the Southwest Kansas Royalty Owners Association. It was a very serious attempt by this Appellant to call to the attention of the Commission the results of its practice in setting artificially high allowables, thus making vast quantities of gas available for production which were not produced because such quantities could not be marketed. It sought to call graphically to the attention of the Commission its attempts to capture interstate markets—that the Commission was acting outside the ambit of state authority.

It is suggested in support of some of the motions to dismiss that there has been no retaliatory action from other states during the eight years that this matter has been pending. Of course during all but the last few months the orders of the Commission have been stayed. Doubtlessly other gas producing states are awaiting the outcome of this case.

It is suggested by Appellees that this Court should decline to note probable jurisdiction since the Kansas Com-

*The Commission was advised and understood the position of Appellant as the Record discloses (R. Vol. III, p. 280), which we have reproduced and attached as an appendix to this brief at App. A5.

mission has entered a moratorium as to its orders and the accumulated underage arising therefrom. This is in the nature of an admission and avoidance. But a moratorium does not avoid. It does not bring the tampering with interstate markets within the production and gathering exception to the Natural Gas Act. By entry of such moratorium order the Commission is actually recognizing that its orders under which the great underages developed were not proration orders. If the Commission had entered proration orders, these indigestible underages would not exist.

Once before the State Corporation Commission, joined by the Southwest Kansas Royalty Owners Association, sought to convince this Court that it dealt only with the production of gas in the Kansas Hugoton Field and was exempt from the provisions of the Natural Gas Act. As we set forth in our Jurisdictional Statement, this effort was unsuccessful, being met by this Court's decision in *Cities Service Gas Co. v. State Corporation Commission of Kansas*, 355 U.S. 391, 78 S. Ct. 381, 2 L. Ed. 2d 355 (1958). We submit that history is repeating itself—that again the Commission, joined by the Southwest Kansas Royalty Owners Association, is endeavoring to convince this Court that the setting of the market for the Kansas Hugoton Field, at a share as envisioned to be fair by that group of the interstate market for gas in these United States, is production and exempt under the Natural Gas Act. Obviously the matter of the interstate market for gas is beyond the production and gathering exemption. By its very nature it involves the sale and transportation of gas in interstate commerce; it involves the purchasing patterns of the pipe line purchasers; it involves the cost of gas to the ultimate consumer.

This Court should again speak, and speak plainly, to the Kansas Supreme Court and again adjudicate the invalidity of the contentions made by the State Corporation Commission, joined by its ally, the Southwest Kansas Royalty Owners Association.

III.

THERE IS NO PROCEDURAL MATTER INVOLVED IN THE INSTANT CASES WHICH AFFECTS THE JURISDICTION OF THIS COURT TO REVIEW THE DECISIONS OF THE KANSAS SUPREME COURT.

Appellees assert in their motions to dismiss that there are procedural problems or difficulties which bear on the jurisdiction of this Court to consider the questions presented in our Jurisdictional Statement. We submit that in this they are in error. The basis of their assertion should be examined to disclose such error.

These proceedings began before the State Corporation Commission in March of 1956. The Commission held hearings off and on over a period of almost two years before it determined by its order effective February 1, 1958, how it would proceed in its experimentation in the Kansas Hugoton Field. During such period it entered what it termed "Interim Orders". Whatever the effect of such orders as adjudicated by the Kansas Supreme Court, the parties, during the time the matter was being considered by the State Corporation Commission, considered that such orders were not final and therefore not appealable since the Commission had not yet announced how it would proceed and denominated its orders "Interim Orders".* If such orders

*See statement of the Chairman of the Commission (R. Vol. III, pp. 229-231). We have reproduced the statement in the appendix hereto at App. A4-A5.

are indeed final orders, as the Kansas Supreme Court determined, they may not be reviewable since no petition for rehearing was filed concerning them. This, however, does not mean that the questions presented in the Jurisdictional Statement are not properly presented.

Beginning with November of 1957 and continuing to January of 1959, there were petitions for rehearing timely filed and then petitions for judicial review filed, all in the District Court of Finney County, Kansas, by this Appellant. All interested parties at this point and as to these orders, entered their appearance in that court. There is no possible question concerning the jurisdiction of that court to hear the petitions. As a matter of fact Appellant prevailed in that court. It is true that the Kansas Supreme Court disagreed and reversed, with directions to such court to approve the applicable orders during the period November, 1957 through January, 1959. Note the direction of the Kansas Supreme Court contained in the appendix to our Jurisdictional Statement at A-42.

This determination by the Kansas Supreme Court came after a consideration of the federal questions presented in our Jurisdictional Statement and a determination that such orders were valid as the Kansas Supreme Court construed the federal constitution and the Natural Gas Act. It is to review this decision that we filed the appeal from the first opinion of the Supreme Court of Kansas.*

After the amendment to the Kansas Gas Conservation Act, this Appellant proceeded in exactly the same manner as it had been doing for some years, i.e., filing, first, pe-

*We filed two appeals because the Kansas Legislature amended the Gas Conservation Act. Actually the Supreme Court of Kansas has determined that the Kansas law is the same under the amended Act as it was theretofore.

titions for rehearing, and then petitions for judicial review in the District Court of Finney County, Kansas, these appeals being from the six months' proration order for the period October 1, 1959 through March 31, 1960, and from each of the monthly orders entered pursuant thereto for October through December, 1959, and January through March, 1960.

The Southwest Kansas Royalty Owners Association filed a petition for judicial review after having filed a petition for rehearing in the District Court of Stevens County, Kansas, a few days earlier as to the six months' order and as to the October order. The remaining petitions were all filed on the same day as the petitions of this Appellant, the petitions of the Southwest Kansas Royalty Owners Association in Stevens County and this Appellant's petitions in Finney County. This Appellant never appeared in Stevens County and never was served with any summons to appear in Stevens County. It followed what it conceived to be a practice recognized by the Kansas Supreme Court, of filing its own petition for judicial review in a court of competent jurisdiction. Indeed the Kansas Supreme Court had a few years earlier heard appeals, after petitions for judicial review were filed from two separate counties and made no indication in its decision (where both such appeals were heard together, just as in the instant appeals) that there was anything wrong with such procedure, as note *Kansas-Nebraska Natural Gas Co. v. State Corporation Commission* (37,921 from the Finney County District Court), *Northern Natural Gas Co. v. State Corporation Commission* (37,920 from the Finney County District Court), and *Panhandle Eastern Pipe Line Company v. State Corporation Commission* (37,924 from the Seward County District Court), 169 Kan. 722, 222 P.2d 704 (1950). Additionally Appellant felt (and in this the Kansas Su-

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preme Court has indicated that it was correct) that the same question was presented under the old Kansas Gas Conservation Act as that presented under the new, and that, therefore, the District Court of Finney County, Kansas, where the first petitions for judicial review were filed, was the proper court in which to continue the litigation. There is authority from the Supreme Court of Kansas which would so indicate, as note *City of Hutchinson* v. *Hutchinson Gas Company*, 125 Kan. 346, 264 Pac. 68 (1928).

Appellees assert that, since the Kansas Supreme Court, in considering the procedural aspects for guidance in future actions, determined that Stevens County had jurisdiction and there was no jurisdiction in Finney County, Appellant has no right of appeal. Again, Appellees are in error in such contention: First, because the Kansas Supreme Court has recognized that the problems presented in the various appeals are the same, whether before or after the amendment to the Kansas Gas Conservation Act, and Appellant presented, and obtained a determination of, the federal questions which it asserts in its Jurisdictional Statement in cases heard only in the District Court of Finney County, Kansas; and, second, because state procedure in matters of this kind can not preclude review by this Court.

This Court has frequently indicated that untenable state grounds may not preclude review of federal questions, particularly where rules of state pleading or procedure have been used unreasonably to avoid a decision relative to federal rights. See *Davis* v. *Wechsler*, 263 U.S. 22, 24, 44 S. Ct. 13, 68 L. Ed. 143 145 (1923); and *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, 455-458, 78 S. Ct. 1163, 2 L. Ed. 2d 1488, 1495-1497 (1958). As put by Mr. Justice Clark in *Williams* v. *Georgia*, 349 U.S. 375, 399, 75 S. Ct. 814, 99 L. Ed. 1161, 1178 (1955),

"* * * A purported state ground is not independent and adequate in two instances. *First*, where the circumstances give rise to an inference that the state court is guilty of an evasion—an interpretation of state law with the specific intent to deprive a litigant of a federal right. *Second*, where the state law, honestly applied though it may be, and even dictated by the precedents, throws such obstacles in the way of enforcement of federal rights that it must be struck down as unreasonably interfering with the vindication of such rights."

We submit that certainly as to the first appeal before the change in the Kansas Gas Conservation Act, the Kansas Supreme Court met the federal questions presented squarely and did not seek in any way to rest the decision on any state ground. The questions presented in our Jurisdictional Statement as to such first appeal were recognized and determined by the Kansas Supreme Court without any procedural problem whatever, at least for the months from November, 1957, through January, 1959.

It is apparent from the decision of the Kansas Supreme Court that it considered the federal questions involved and set forth in our Jurisdictional Statement as being the same whether under the old or the new Kansas statute. Such federal questions are, therefore, properly presented in our Jurisdictional Statement. The only possible difficulty is the decision of the Kansas Supreme Court that the Finney County District Court had no jurisdiction under the statute as amended since the first two petitions for review were filed in Stevens County and the remaining petitions were simultaneously filed in Finney and Stevens Counties. These procedural difficulties or obstacles should not preclude this Court from consideration of the federal questions which were promptly and

properly raised and which were determined by the Kansas Supreme Court.

This Court should note probable jurisdiction and on the hearing on the merits determine that the questions presented in our Jurisdictional Statement are federal questions and that the orders of the Kansas State Corporation Commission are beyond the ambit of state authority.

Respectfully submitted,

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APPENDIX A

See page 7 of Brief.

Dissenting Opinion of the Chairman of the State Corporation Commission to the Commission's Order for December, 1957. (R. Vol. III, pp. 238-240)

For the reasons set forth in my special concurring opinion in Dockets 51,342-C, 53,042-C, 54,220-C and 51,488-C, issued January 22, 1958, and made effective February 1, 1958, I feel that the action we are now taking on the 5th day of February, 1958, in regard to the belated December allowable for the Hugoton Field, is unrealistic and is not effective proration.

This December allowable and proration order for the Hugoton Field evidences an intention on the part of this commission to continue down the road of setting artificially high allowables for the purpose of forcing more speedy depletion of the field. If this is what the majority of the industry wants, I have no vehement objections, but I cannot overlook the fact that this Commission is established by statute as a state conservation commission and I fear that it has no jurisdiction to take sides with part of the industry as against another part to promote such a social and economic program.

This December current allowable is equal to and the December net allowable is grossly in excess of what was produced and sold from the Hugoton Field. It has little or no relation to the amount of gas that was marketed in December. We already know the actual runs from the

field for December. They were approximately 47,000,000 M.c.f.

It is true that the method of arriving at this allowable for the month of December starts with nominations made by the Pipeline companies themselves, but these pipeline companies have been directed by past practices of this Commission to nominate the full amount that they expect to take from the field this month and each month without regard to past overages and underages. After receiving this nomination this Commission then adds the total net underage for the field, plus the canceled underage and calls that the net allowable for the month. It deviates so far from what the market will absorb that I feel it is not proration as contemplated by the statute. I feel that we have gone as far as we should go in adding to the imbalance of the field.

I have no quarrel with my colleagues or with that portion of the industry that insists on our setting high allowables, but I am fearful that it is a deviation from our duty under the statutes and I want to be on record as having called attention to it and not grasping for or desiring to exceed the jurisdiction granted us by the Legislature.

I, therefore, respectfully dissent.

/s/ Marion Beatty,
Marion Beatty.

APPENDIX B

See page 9 of brief.

Explanation Concerning Appellant's Zero Nomination. (R. Vol. III, p. 280)

By Mr. Stucky:

Q. Mr. Godfrey, with Colorado Interstate indicating to this Commission that it has no requirements for gas from the Kansas Hugoton Field during this six-month period, you would expect your participation in the nominations to be greater than 15.78 percent, would you not?

Mr. Linley: Of the nominations, you mean?

Mr. Stucky: Of the nominations.

Mr. Poe: Right here I want to take exception to the statement of counsel that we indicated to the Commission we had no need for gas from the Hugoton Field for this next period. That is exactly what we did not (T. 161) indicate. We merely stated that under the present practices of the Commission there are sufficient accumulated underages to take care of all of our needs during the next six-month period without the assignment of any current allowable to our wells, and that is precisely why I wanted to get that letter in evidence this morning because I anticipated such a statement as this would be made. The practices of the Commission are known, you have expressed them in an order, and I think that in order to be honest and to take a realistic view of it, we could not have nominated anything other than what we did nominate for the next period.

Commissioner Wiles: The Commission I think understands your position on that, Mr. Poe. However, the question was based strictly on the question of the nominations which have been submitted and, taking your explanation of that, I think he is assuming that your zero nomination is part of the overall nominations. I think the question is proper.

APPENDIX C

See page 11 of Brief.

State Corporation Commission's Comment Concerning "Interim Orders". (R. Vol. III, pp. 229-231)

Chairman Beatty: I for one agree with you on one point at least, and that is that the Commission should as soon as possible get out of this interim order situation (T. 532) and there should be some indication or statement so that everyone will know where we are going. Now, how soon we can do that or whether we can do it, I don't know. We will have to take this whole matter under advisement and the Commission will go into it immediately. In fact, we are going into it tomorrow, if we have time, here with our own staff and start considering what action the Commission can eventually take and what we can figure out (T. 533).

Chairman Beatty: Now, Mr. Stucky, we have been with this ever since we have been on the Commission and Mr. Byrd has been with it longer than that and we hardly expected some of the purchasers to come up with a solution but we were in hopes that you would come up with a specific solution to this problem so we could solve it and everybody live happily ever after, and my reason for asking you these questions a while ago was to see what your solution to this thing is, and the way I summarize it now is that your solution, which is on Pages 17 and 18 of your summation, is that we must quit considering nominations solely and we must take into consideration three other factors which we have just enumerated a few minutes ago, and that you think if we will do that that we will come up with a solution that is approximately 25 percent over and above the takes of last year. Now, that is the way I

interpret your solution to this whole matter that has been running on (T. 538) for a year and a half, and I hope I have it right and we are going to seriously consider it. Now, we have no solution to this. We were looking to you for a solution, and I presume that is your solution and we are seriously going to consider it and I expect that we will have a chance to re-read your summation here and if that isn't all of it I hope we can get all of your solution, but we have been looking to you for a solution and some specific suggestion on what to do here (T. 539).

Chairman Beatty: Gentlemen, we presume that there are no further comments and no further statements to be made in connection with this matter. The Commission is going to take the matter under advisement and the Commission is considering this docket closed, unless for some urgent reason we see fit to open it, and we hope to have some kind of an order within a reasonable time (T. 544).